

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF MEETING
DECEMBER 6, 2005**

CALL TO ORDER

The regular meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Committee members present were, Tony Sagami, Dennis Rea, Mark Hash, Gina Klempel, and Scott Hollinger. Kirsten Holland represented the Flathead County Planning & Zoning Office (FCPZ).

There were approximately 7 people in the audience.

**APPROVAL OF
MINUTES**

Hollinger made a motion seconded by Klempel to approve the November 1, 2005 minutes.

ROLL CALL

On a roll call a vote the motion passed unanimously.

**ZONING
VARIANCE/SLOAN &
BOLLES**

A request by Martha Sloan and Jane Bolles for a zoning variance to their property located within the Canyon Area Zoning District. Specifically, the variance would be to the minimum lot size required in the C.A.L.U.R.S Regulations. The property is located off Grizzly Spur in West Glacier.

STAFF REPORT

Kirsten Holland of the Flathead County Planning & Zoning Office reviewed Staff Report FZV-05-07 for the Board.

PUBLIC COMMENT

The Board listened to public comment from Pat McClelland, a member of the Middle Canyon Land Use Advisory Committee, who informed the Board of a favorable recommendation from their meeting on November 29, 2005. She stated that this proposal stays within the character of the community, and the Committee didn't want to see this property end up to be a commercial development. Rich Macatee also spoke in favor of this proposal. He would be the beneficiary of one of the parcels of land once it is split. He stated that he grew up in that area, not far from this property, and wants it to remain in the family. He and his wife will build a home there, and live and work in the area.

BOARD DISCUSSION

Hollinger stated that as he read this proposal he noted that where it states in the staff report that this variance "would not limit the reasonable use of the property and deprive the applicant of rights enjoyed by other similarly situated properties", he takes exception to that because there are non-conforming properties all around this parcel, and therefore the applicants are deprived the right that all the surrounding properties have. The right to be non-conforming. He stated that it doesn't make any sense to say that we're going to zone

this, and all the non-conforming properties are normal, and the properties that meet zoning have to ask for a special privilege. It doesn't make any sense that the privilege is granted to all the non-conforming properties already.

Hash commented that the Board needs to be careful about how this is going to be looked at next time this issue comes up. He understands what Hollinger is saying about a reasonable use being denied, but to him, that is why zoning was put into place. Zoning is to limit the use and uses already started; for the future. He agreed that the Board should adopt the findings of fact as suggested by Hollinger, but he is concerned that this may open 'Pandora's Box' as he could see the argument for every variance, that someone would want to limit the restrictions.

Hollinger asked if zoning is used to limit use or define use.

Kirsten stated that it is fair to say that it is to define used but also to limit it as well.

Hollinger stated that a lot of people think that zoning is a tool used to limit use.

Kirsten commented that it makes sense to explore the possibility that limiting the reasonable use of the property, although they might not be deprived of rights enjoyed by other properties, if we can find that it would limit the reasonable use of the property that's enough for it to meet the criteria. And if the reasonable use of the property is to maintain it in the character of the West Glacier community, and not have it turned into a commercial use or something else that would be allowed, that may be not as suitable for the neighborhood, you could say that the reasonable use of the property is to maintain it in its current rural state.

Klempel asked how many homes are currently on the property.

The applicants stated that there are currently no homes there. They also stated that they could easily sell the property to somebody else who would destroy it and by dividing it this way, the property would be taken care of by two young couples who would build their homes and lives in the community.

Kirsten stated that although we have seen two variance requests in the past couple of months, we get very few of them. She also stated that these two have been very unique situations and do have an argument to their request. We are strictly defined by the criteria in the Zoning Regulations, the

applicant must meet all eight. That is really the important thing that needs to be hashed out here.

Rea asked that if the Board should approve the variance, could they condition it that it would not be allowed to be split again.

Holland replied that they would have to come back if they were to try to split it again. She stated that if they came in and said they have 7 ½ acres in West Glacier, the first thing any of the Planners would tell them is that they have a non-conforming parcel and that they are not allowed to split it. The parcel right now is conforming. They have 15 acres, and the minimum lot size is 10 acres. But if someone were to come in with a non-conforming parcel and want to split it, the Planners would discourage them. A person can not come in with a non-conforming parcel and make it more non-conforming. She states that we could not condition it only because it would be hard to follow up on it.

Rea stated that he is looking down the road twenty years or so and they want to split their parcel in half for their children.

Kirsten replied that they would have to come back through this process again, they can not just family transfer, it would get kicked back. We don't really have a way to condition it.

Sagami asked if you can do a family transfer on a non-conforming lot.

Kirsten said that you can family transfer a non-conforming lot but that if it's already existing there is really no reason to family transfer it. The only regulations that they have to adhere to is the zoning. So if you are in a SAG-10 and want to give each kid 5 acres, you can't do it.

Hash asked what Kirsten's thoughts were about the special privilege.

Kirsten replied that it depends on how you define similar. She stated that it's the only way you can look at it because similar properties, we're not in an area that is highly developed or highly dense, so if other properties (and there is only 1 adjoining landowner) will confer a special privilege if denied, would be incorrect. The only other property adjacent to them can be divided. So you could say that it doesn't give them a special privilege because the only other neighbor is allowed that privilege by virtue of their lot size.

Hash stated that he thinks it's important that the Board comes up with language that the Planning Office staff feels comfortable with.

After putting some thoughts together between the Board and Planning Staff, the wording for Section H reads:

Granting the variance will not confer a special privilege that is denied other similar properties in the same district, as the only other property in the area is allowed further division.

The wording for Section A reads:

Strict compliance with the regulations will not deprive the applicant of the continued historical use of the property unique to both the family and the community.

MOTION

Hollinger made a motion seconded by Hash to adopt Staff Report FZV-05-07 as findings of fact as amended and recommended approval to the County Commissioners.

ROLL CALL

On a roll call vote the motion passed unanimously.

**ZONING VARIANCE/
DAVID CHRISTENSEN**

A request by David Christensen for a zoning variance to the setbacks on property located in the Bigfork R-4 (Two-Family Limited Residential) Zoning District. Specifically the variance would be to Section 3.12.040 Setbacks 3.A in the Flathead County Zoning Regulations which require a twenty (20) foot setback. The applicant is requesting a four (4) to eight (8) foot variance from the required setback. The property is located at 238 Beach Road in Bigfork.

STAFF REPORT

Kirsten Holland of the Flathead County Planning & Zoning Office reviewed Staff Report FZV-05-03 for the Board.

None

**PUBLIC COMMENT
BOARD DISCUSSION**

The Board asked several questions of staff regarding whether or not the road is a private or a county road. They also asked if the Bigfork Fire Department had any comment on this proposal. Kirsten said no comment was received by the Fire Department or any other agencies. It was determined that it is a private road. The Board also asked what the Bigfork Land Use Advisory Committee had recommended. Kirsten stated that the Committee voted in favor of this proposal. There was no other discussion.

MOTION

Hollinger made a motion seconded by Sagami to adopt Staff

Report FZV-05-03 as finding of fact and recommended approval to the County Commissioners.

ROLL CALL

On a roll call vote the motion passed unanimously.

OLD BUSINESS

None.

NEW BUSINESS

The Board asked what was on the agenda for their next meeting. Kirsten explained what was coming up.

ADJOURNMENT

The meeting was adjourned at 7:00 p.m. The next meeting will be held at 6:00 p.m. on January 3, 2006.

Dennis Rea, President

Mary Sevier, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 1/3/06